

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)

YARCO COMPANY, INC.)
Kansas City, Missouri)

Respondent)

Docket No. TSCA-07-2003-0109

CONSENT AGREEMENT AND FINAL ORDER

INTRODUCTION

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Yarco Company, Inc., 3770 Broadway, Kansas City, Missouri, 64111.

COMPLAINANT'S ALLEGATIONS

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Allegations Pertaining to All Counts

1. Yarco Company, Inc. ("Respondent"), is a Missouri corporation.
2. For all periods of time relevant to the violations alleged herein, Villa Monterrey Development Company, L.P., a Kansas limited partnership ("Owner"), owned a residential apartment complex located at 9800 W. 86th Street, Overland Park, Kansas, and known as Villa Monterrey Apartments & Townhomes (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. Prior to the violations alleged herein, Respondent had entered into a contract or agreement with the Owner, for the purpose of managing the leasing of the Property.

Count I - Failure to Provide Pamphlet
9832 W. 86th Street Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

6. On or about March 28, 2002, Respondent entered into a rental agreement (the 9832 W. 86th Street Contract") with Rachel and Juan Perez, for the lease of the Property, 9832 W. 86th Street, for residential use.

7. Subsequent to the 9832 W. 86th Street Contract, Rachel and Juan Perez moved into 9832 W. 86th Street, along with their two minor children.

8. As a result of the 9832 W. 86th Street Contract, the Owner became a "lessor", Respondent became an "agent", and Rachel and Juan Perez became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

11. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Rachel and Juan Perez prior to being obligated under the 9832 W. 86th Street Contract.

12. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Rachel and Juan Perez prior to being obligated under the 9832 W. 86th Street Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count II - Failure to Provide Pamphlet
9747 W. 85th Street, Apartment A Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

13. On or about December 29, 2001, Respondent entered into a rental agreement (the "9747 W. 85th Street, Apartment A Contract") with Carl Simpson, for the lease of the Property, 9747 W. 85th Street, Apartment A, for residential use.

14. Subsequent to the 9747 W. 85th Street, Apartment A Contract, Carl Simpson moved into 9747 W. 85th Street, Apartment A, along with his two minor children.

15. As a result of the 9747 W. 85th Street, Apartment A Contract, the Owner became a "lessor", Respondent became an "agent", and Carl Simpson became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

16. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

17. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

18. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Carl Simpson prior to being obligated under the 9747 W. 85th Street, Apartment A Contract.

19. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Carl Simpson prior to being obligated under the 9747 W. 85th Street, Apartment A Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count III - Failure to Provide Pamphlet
9720 W. 86th Street Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

20. On or about September 1, 2000, Respondent entered into a rental agreement (the "9720 W. 86th Street Contract") with, Rahsaan and Megan Allen, for the lease of the Property, 9720 W. 86th Street, for residential use.

21. Subsequent to the 9720 W. 86th Street Contract, Rahsaan and Megan Allen moved into 9720 W. 86th Street, along with their two minor children.

22. As a result of the 9720 W. 86th Street Contract, the Owner became a "lessor", Respondent became an "agent", and Rahsaan and Megan Allen became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

23. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

24. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

25. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Rahsaan and Megan Allen prior to being obligated under the 9720 W. 86th Street Contract.

26. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Rahsaan and Megan Allen prior to being obligated under the 9720 W. 86th Street Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count IV - Failure to Provide Pamphlet
9751 W. 85th Street, Apartment C Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

27. On or about May 20, 2000, Respondent entered into a rental agreement (the 9751 W. 85th Street, Apartment C Contract") with Pat Beers, for the lease of the Property, 9751 W. 85th Street, Apartment C, for residential use.

28. Subsequent to the 9751 W. 85th Street, Apartment C Contract, Pat Beers moved into 9751 W. 85th Street, Apartment C, along with her four minor children.

29. As a result of the 9751 W. 85th Street, Apartment C Contract, the Owner became a "lessor", Respondent became an "agent", and Pat Beers became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

30. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

31. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

32. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Pat Beers prior to being obligated under the 9751 W. 85th Street, Apartment C Contract.

33. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Pat Beers prior to being obligated under the 9751 W. 85th Street, Apartment C Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count V - Failure to Provide Pamphlet
9744 W. 86th Street, Apartment B Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

34. On or about July 1, 1999, Respondent entered into a rental agreement (the "9744 W. 86th Street, Apartment B Contract") with Christian and Tiffany Condit, for the lease of the Property, 9744 W. 86th Street, Apartment B, for residential use.

35. Subsequent to the 9744 W. 86th Street, Apartment B Contract, Christian and Tiffany Condit moved into 9744 W. 86th Street, Apartment B, along with their two minor children.

36. As a result of the 9744 W. 86th Street, Apartment B Contract, the Owner became a "lessor", Respondent became an "agent", and Christian and Tiffany Condit became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

37. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

38. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

39. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Christian and Tiffany Condit prior to being obligated under the 9744 W. 86th Street, Apartment B Contract.

40. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Christian and Tiffany Condit prior to being obligated under the 9744 W. 86th Street, Apartment B Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and TSCA § 409.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. For purposes of this Consent Agreement, Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Four Thousand Six Hundred and Twenty Dollars (\$4620) to be paid within thirty (30) days of the effective date of the Final Order, in full resolution of this matter.

6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid

balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Four Thousand Six Hundred and Twenty Dollars (\$4620) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

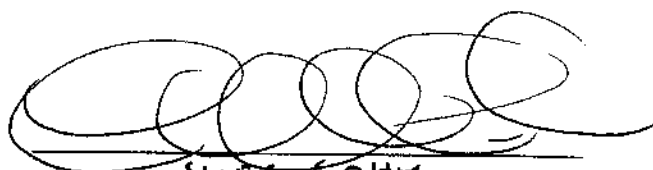
Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

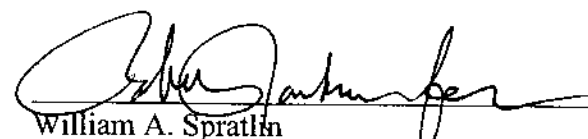
RESPONDENT:
YARCO COMPANY, INC.

Date 4/14/03

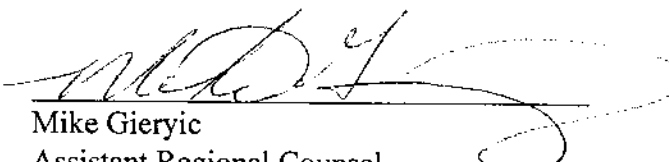
By 
Title President

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

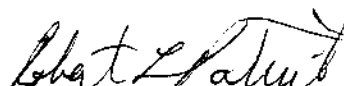
Date 4-16-03

By 
William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 4/17/03

By 
Mike Gieryic
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date April 22, 2003

IN THE MATTER OF YARCO Company, Inc., Respondent
Docket No. TSCA-07-2003-0109

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Cliff Cohn, President
YARCO Company, Inc.
3770 Broadway
Kansas City, Missouri 64111

Dated: 4/22/03



Kathy Robinson
Regional Hearing Clerk